

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ARGELIA GUERRERO
Claimant

VS.

NATIONAL BEEF PACKING CO.
Respondent

AND

FIDELITY & GUARANTY INS.
LIBERTY MUTUAL INS. CO.
Insurance Carriers

Docket No. 1,008,619

ORDER

Respondent requests review of the August 29, 2006 Order for Medical Treatment entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

The Administrative Law Judge (ALJ) ordered respondent and insurance carrier Fidelity & Guaranty Insurance Co. (Fidelity) to pay for claimant's medical treatment until further order or until claimant has been certified as having reached maximum medical improvement or becomes re-employed.

The respondent requests review of whether the claimant's date of accident occurred before or after September 1, 2002. Respondent argues that claimant's date of accident falls within the coverage period provided by Liberty Mutual Insurance Co. (Liberty) and not that provided by Fidelity.

Respondent and Liberty contend that claimant's injury, bilateral carpal tunnel, results from repetitive use beginning in July 2002 and continuing each and every working day

thereafter, spanning both periods of coverage. And under *Lott-Edwards*¹ Fidelity is responsible for claimant's medical treatment during its coverage period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board finds and concludes this appeal should be dismissed as the Board does not have the jurisdiction to review the issue now presented.

The Board has repeatedly held that issues involving the date of accident and coverage disputes between insurance carriers, as to which is to pay the cost of preliminary benefits for the same employer, are not jurisdictional.² K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.³ There is no such allegation made herein.

Jurisdiction is defined as the power of a court to hear and decide a matter. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁴

¹ *Lotts-Edwards v. Americold Corp.*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000)..

² *Groth v. K. L. Johnson Trucking, Inc., and United Agri Products-Pueblo*, No. 1,013,431, 2004 WL 1778913 (Kan. WCAB July 16, 2004); *Ireland v. Ireland Court Reporting*, Nos. 176,441 and 234,974, 1999 WL 123220 (Kan. WCAB Feb. 22, 1999).

³ See K.S.A. 44-551.

⁴ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

As the date of accident for purposes of determining liability among an employer's various insurance carriers is not an issue that the Board has the authority to review from a preliminary hearing order, Fidelity's appeal should be and is dismissed.

WHEREFORE, it is the finding, decision and order of the Board that the appeal of the Order for Medical Treatment of Administrative Law Judge Pamela J. Fuller dated August 29, 2006, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of October, 2006.

BOARD MEMBER

c: Albert Herdoiza, Attorney for Claimant
 D. Shane Bangerter, Attorney for Respondent and Fidelity & Guaranty Ins.
 Terry J. Malone, Attorney for Respondent and Liberty Mutual Ins. Co.
 Pamela J. Fuller, Administrative Law Judge